

## **Why Eliminating the Sunset Provision of Michigan's Post-Conviction DNA Testing Law, MCL 770.16, Protects Michigan Citizens**

In 2001, Michigan passed a post-conviction DNA testing law to provide a clear avenue for wrongfully convicted individuals to prove their innocence through DNA evidence. This law also helps to ensure that the actual perpetrator of the crime is identified and brought to justice. Thus, MCL 770.16 protects both the rights and safety of Michigan citizens.

Michigan was one of the earlier states to pass a post-conviction DNA testing law, and now that these laws exist in all 50 states we have the benefit of knowing which provisions can be improved to enhance justice. Eliminating the sunset provision of MCL 770.16 would strengthen Michigan's law to ensure that wrongfully convicted individuals have meaningful access to DNA testing and actual perpetrators are identified and prosecuted.

### **Remove the Sunset Provision**

Michigan's post-conviction testing law contains a "sunset provision" that requires legislative action to extend the statute. Since 2001, lawmakers have extended the law twice, with the current sunset being January 1, 2016. Michiganders deserve a permanent law that provides a pathway to justice. There are 12 states that had sunset provisions in their original post-conviction DNA testing law. Ten states have removed the sunset provision: AR, CT, DE, GA, ID, MN, OH, FL, NM, OR. *Louisiana is the only other state with a sunset provision.*

- **Advancements in DNA Testing**

Since the last extension of MCL 770.16, there have been significant advancements in DNA technology. The Michigan State Police Crime Laboratory has only had the capability for Y-STR DNA testing since April 2011. Y-STR is particularly useful in rape cases. In late 2014, the Michigan State Police Crime Laboratory added two new cutting-edge DNA technologies. These new testing kits are more sensitive and may render results on crime samples where previous DNA testing did not. These technologies, along with the use of "touch DNA," demonstrate that DNA testing will continue to improve. In turn, the ability to identify the perpetrators of crime through the Combined Offender Data Information System (CODIS) will increase. Post-conviction DNA testing ensures that the right person is held accountable for the most serious offenses. For this reason alone, there should not be an arbitrary sunset to post-conviction DNA testing.

- **Eliminating the Sunset is Cost Effective.**

The cost of DNA testing continues to decrease. The WMU-Cooley Innocence Project has screened over 5000 cases since 2001. The Project does not charge for its services and has contributed thousands of hours of legal work screening cases under MCL 770.16. The average cost of incarceration is \$35,000 annually. These costs are saved when an innocent individual is identified and released. If the sunset takes effect, innocent individuals will not have access to post-conviction DNA testing, will be unable to prove their innocence, and will remain incarcerated. Wrongful incarceration is a financial burden on the state.

- **There Has Been No Burden on Michigan Courts**

When MCL 770.16 was enacted in 2001 the WMU-Cooley Innocence Project was established to review cases for strong claims of factual innocence under the statute. Since 2001, the Project has screened over 5000 cases and has filed 27 petitions for DNA testing. While some prisoners have filed petitions on their own, there is no evidence that petitions for DNA testing have burdened the courts. The majority of cases have been carefully screened and vetted by the WMU-Cooley Innocence Project. There has not been a flood of litigation in Michigan. For a national perspective on the impact on courts,

see <http://www.csmonitor.com/layout/set/print/2006/0131/p03s03-usju.html>.

Due to the difficulty of locating court documents and finding evidence, screening of cases takes significant time.

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Disorganized property rooms make locating evidence particularly challenging. The recent attention to the untested rape kits in Detroit and the sheer volume of untracked evidence in Flint demonstrate that it takes years to audit and properly catalogue evidence.

<http://www.detroitnews.com/story/news/politics/2015/01/27/michigan-senate-gop/22405915/>

[http://www.mlive.com/news/flint/index.ssf/2015/01/report\\_consultants\\_astounded\\_b.html](http://www.mlive.com/news/flint/index.ssf/2015/01/report_consultants_astounded_b.html)

The Project has had difficulty locating evidence in the majority of its cases; it often takes years to locate the evidence. For example, the Project has yet to confirm the existence of evidence in a 1987 Flint case. The WMU-Cooley Innocence Project currently has a waiting list of 42 cases, 35 cases are assigned to students for in-depth review. Seven cases are in the final stages of review. The sunset provision arbitrarily limits an innocent prisoner's access to DNA testing. Eliminating the sunset provision will allow the Project to continue to carefully screen and pursue strong claims of factual innocence through the use of current DNA technology.

In sum, the sunset on post-conviction DNA testing no longer makes legal or economic sense. By eliminating the current sunset provision, the interests of justice and safety are met.

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